

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**BRIAN CHRISTOPHER EATON, *et al.*,**

**Plaintiffs,**

**Case No. 2:19-cv-3412**

**JUDGE EDMUND A. SARGUS, JR.**

**Magistrate Judge Elizabeth P. Deavers**

**v.**

**ASCENT RESOURCES-UTICA, LLC.,**

**Defendant.**

**OPINION AND ORDER**

This matter is before the Court on the parties' Joint Motion for an Order Dismissing the Fraud Claim without Prejudice. (ECF No. 95.) This motion is GRANTED. As the parties correctly point out, the Sixth Circuit does not permit voluntary dismissal of less than an entire action under Federal Rule of Civil Procedure 41. *See United States ex rel. Doe v. Preferred Care, Inc.*, 326 F.R.D. 462, 464-65 (E.D. Ky. 2018) (summarizing Sixth Circuit law on Rule 41). However, again as the parties properly suggest, Rule 15(a)(2) of the Federal Rules of Civil Procedure permits a party to amend its pleading by leave of court that "shall be freely given when justice so requires," provides an alternative mechanism to eliminate the fraud claim. *Barrientos v. UT-Battelle, LLC*, 284 F. Supp. 2d 908, 916 (S.D. Ohio 2003).

The Court finds here that justice requires removal of the fraud claim from this action. Accordingly, the Court deems Plaintiff's First Consolidated Class Action Complaint to be amended to omit Claim Four for fraud without requiring the filing of a new complaint. This amendment will simplify the case going forward and has no effect on the prior class certification

Opinion and Order (ECF No. 52), the pending motions for partial summary judgment (ECF Nos. 71, 85), or the pending motion to modify the class definition or compel arbitration (ECF No. 74).

**IT IS SO ORDERED.**

**4/12/2023**  
**DATE**

**s/Edmund A. Sargus, Jr.**  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**